



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Information Ventures, Inc.

File: B-243929

Date: September 9, 1991

John W. Fowler, Jr., Esq., Saul, Ewing, Remick & Saul, for the protester.

Michael Colvin, Esq., Department of Health and Human Services, for the agency.

Jeanne W. Isrin, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency's determination to exclude protester's proposal from the competitive range was reasonable where protester offered level-of-effort amounting to only 70 percent of the government's estimate and the hours offered by the proposed awardee at a price less than 1 percent below proposed awardee's, and protester's proposal was so technically inferior that, notwithstanding possibility that some deficiencies might have been cured through discussions, it had no reasonable chance of award.

DECISION

Information Ventures, Inc. (IVI) protests the exclusion of its proposal from the competitive range by the National Cancer Institute (NCI), Department of Health and Human Services, under request for proposals (RFP) No. NCI-CP-05648-18, issued to procure a survey of scientific literature in specified subject areas and the publication of the results.

We deny the protest.

The contract principally calls for the searching of scientific literature for studies performed testing the carcinogenicity of chemical compounds for the years 1991-1994, and for publication of the results as part of an ongoing NCI project entitled "Survey of Compounds Which Have Been Tested for Carcinogenic Activity, PHS-149." The solicitation was issued on November 28, 1990, as a total small business set-aside, and contemplated award of a 4-year cost reimbursement contract. The estimated effort for the project was 27,960 hours. Technical proposals were required and were to be evaluated

based on the following criteria: Qualification and Experience of Personnel (35 of 100 available points); Technical Approach and Understanding of the Project (25 points); Quality Assurance/Quality Control (20 points); Availability of Facilities and Information Resources (10 points); and Qualifications of the Organization and Management Approach (10 points). The RFP stated that evaluation of technical proposals would be of paramount consideration in the award decision and that cost would become significant only in the event that two or more offerors were rated approximately equal technically.

Five proposals, including IVI's, were received by the December 28 closing date. On February 7, 1991, proposals were evaluated by the Initial Technical Review Group (ITEG), a technical peer review group comprised primarily of scientists from outside the government. The ITEG unanimously found all five proposals technically acceptable, but rated one firm, CCS Associates, substantially higher than the other four. The technical scores (on a scale of 1,000 possible points) were as follows:

<u>Offeror</u>	<u>Score</u>	<u>Proposed Cost/Fee</u>	<u>Proposed Labor Hours</u>
CCS	853	\$844,539	27,960
IVI	485	\$840,900	19,600
Offeror A	391	\$876,313	28,000
Offeror B	354	\$874,413	27,960
Offeror C	317	\$879,872	28,800

On March 15, a second review was conducted by NCI scientists with technical expertise in the subject area, sitting as a source evaluation group (SEG). This panel recommended that a competitive range of one offeror, CCS, be established. The contracting officer accepted that recommendation, determining on April 1 that only CCS had a reasonable chance of receiving the award, and therefore excluded the other proposals, including IVI's, from further consideration. IVI subsequently filed this protest challenging its exclusion. Award has been withheld pending resolution of the protest.

IVI maintains that its proposal did have a reasonable chance of being selected for award, and that it therefore improperly was excluded from the competitive range. IVI asserts that, to the extent its technically acceptable proposal was found deficient, those deficiencies were based on misunderstandings that could have been rectified through discussions by simple explanation, addition of detail, or minor corrections. As all of the perceived weaknesses in IVI's proposal could have been cured through discussions, IVI concludes, NCI had no reasonable basis for excluding IVI's proposal from the competitive

range. Furthermore, noting that its proposed cost was low, IVI argues that NCI improperly did not consider cost in its decision to eliminate IVI's proposal from the competitive range.

NCI acknowledges that some of the weaknesses and deficiencies cited by the two review groups might have been correctable through discussions. NCI maintains, however, that IVI's proposal was so technically inferior to CCS' that it had no reasonable chance of award, particularly given the paramount importance of technical considerations. In making its competitive range determination, NCI also considered that the significant technical changes required to improve CCS' technical proposal would result in a corresponding increase in cost.

In a negotiated procurement, the purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a); Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range is to be "determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award." FAR § 15.609(a). Hence, even a proposal that is technically acceptable as submitted need not be included in the competitive range when, relative to other acceptable offers, it is determined to have no reasonable chance of being selected for award. Wordpro, Inc., B-242100.2, Apr. 24, 1991, 91-1 CPD ¶ 404; see Hummer Assoc., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. This "relative" approach to determining the competitive range, that is, comparing one offeror's proposal to those of other offerors, may be used even where it results in a competitive range of one. Everpure, Inc., B-226395.2; B-226395.3, supra; Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114.

The evaluation of proposals and the determination of whether a proposal is in the competitive range are principally matters within the contracting agency's discretion, since agencies are responsible for defining their needs and for deciding the best method of meeting them. Advanced Sys. Tech., Inc.; Eng'g and Prof. Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. Hence, it is not the function of our Office to evaluate proposals de novo, and while we closely scrutinize an agency decision which results, as in this case, in a competitive range of one, we will not disturb that determination absent a clear showing that it was unreasonable or in violation of procurement laws or regulations. Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273. NCI's determination here was reasonable.

NCI eliminated IVI's proposal on the basis that it contained significant relative weaknesses in the areas of personnel, level-of-effort, and technical approach. For example, it found significant weaknesses in the qualifications and experience of IVI personnel. While the ITEG found that IVI's principal investigator was experienced in supervising biomedical information projects, the SEG questioned the strength of the investigator's technical qualifications in the scientific disciplines required for the project, i.e., biochemistry and biomedical sciences. Although IVI claims that the investigator's resume must have been "misunderstood," it is clear from our review of the resume that his academic background, as described, is predominantly in chemistry and physical chemistry, not biochemistry or biomedical science. In contrast, the resume of CCS' proposed principal investigator indicates that she possesses graduate degrees in chemistry/biochemistry, and has substantial experience with biomedical information projects.

In addition, the agency found that the other proposed IVI personnel generally had limited experience in the development of a data base product as complex as PHS-149, that many of the personnel lacked fully adequate credentials, especially in the area of chemical carcinogenesis, and that, as a result, the personnel likely possessed inadequate awareness of the difficulties to be encountered in editing chemical and biological data and information. The evaluators concluded that the use of such personnel as scanners/data extractors would result in reduced efficiency and effectiveness in article identification and data extraction, thus requiring a higher degree of NCI involvement to assure the necessary quality. Although the protester generally disputes NCI's conclusion in this regard, it provides no details demonstrating the qualifications of its personnel for a project of this type. In contrast, our review of CCS' proposal indicates that, as noted by the agency, CCS and its subcontractor proposed personnel with extensive relevant experience, including recent experience with the very data base in question here, PHS-149. We conclude that NCI properly downgraded IVI in the personnel area, the most important of the technical evaluation factors.

The evaluators also concluded that the 200-hour level-of-effort proposed by IVI for its principal investigator might not be sufficient and questioned his apparent involvement primarily at the end of the project rather than in organizing and leading the program. They noted that IVI furnished no data as to the extent of its proposed use of a group of 23 senior consultants. Likewise, although IVI's proposal recognized the need for quality assurance/quality control procedures, the evaluators noted that it included no details

as to any plan for assuring quality, especially with respect to the crucial task of scientific editing. Indeed, IVI did not detail any standard operating procedures. As we have previously indicated, such mere blanket offers to perform are insufficient to demonstrate the ability to meet the solicitation requirements. See Wordpro, Inc., B-242100.2, supra; American Technical & Analytical Servs., Inc., B-240144, Oct. 26, 1990, 90-2 CPD ¶ 337.

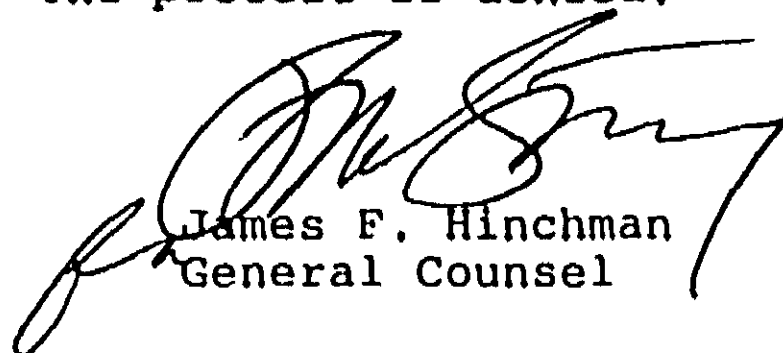
The agency also questioned IVI's proposed list of 760 journals as its prime source of information. While the RFP called for over 600 journals to be searched, agency evaluators noted that only 250 of IVI's proposed journals had yielded useful information for prior volumes in the PHS-149 series; the evaluators expressed concern both at the amount of time likely to be wasted scanning unproductive journals and the fact that many productive journals would not be scanned. Furthermore, the evaluators questioned not only whether IVI would make efficient use of its proposed level-of-effort, but also the magnitude of that effort. They determined that the low number of hours proposed by IVI to perform the contract represented a major flaw in its proposal; IVI's proposal of 19,600 labor hours was substantially less than the government estimate (27,960 hours), CCS' proposed level (27,960 hours), and the proposed levels of all other offerors (27,000-28,000 hours). This disparity indicated to the evaluators that IVI lacked an adequate understanding of what was necessary to successfully accomplish the work, and IVI has presented no evidence that this conclusion was unreasonable.

As for IVI's proposed lower cost, the agency did consider the fact that it was lower than CCS', but concluded that, if adjusted to reflect an adequate technical effort, it would substantially exceed CCS' proposed cost. In this regard, IVI's proposed cost (\$840,900) was only \$3,639 lower than CCS' (\$844,539), but its proposed labor hours (19,600) were significantly below the government's estimate (27,960), and were considered grossly inadequate. IVI has not specifically refuted the agency's conclusions.

IVI essentially argues that these weaknesses and deficiencies in its proposal could have been corrected through discussions. As indicated above, however, the weaknesses and deficiencies were both numerous and significant, and their correction, especially in view of the grossly inadequate proposed level-of-effort, would require a complete rewrite of its proposal and would result in an increase in IVI's costs to a level well above that proposed by the technically superior offeror, CCS. In these circumstances, we find reasonable NCI's conclusion

that IVI lacked any reasonable chance for award and the agency's consequent exclusion of IVI from the competitive range.

The protest is denied.



James F. Hinchman
General Counsel